

Congress of the United States
Washington, DC 20515

June 20, 2014

The Honorable Sloan Gibson
Acting Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Dear Mr. Secretary,

The Government Accountability Office (GAO) recently released a report on the VA's disability claims process for survivors of military sexual trauma (MST). The report confirmed what many in Congress have been saying for too long—VA continues to struggle in adjudicating MST claims correctly. The current regulation for MST claims discriminates against survivors of sexual assault and must be simplified and improved. As you know, in order to file a successful claim, an MST survivor must provide a mental health diagnosis, a medical link or nexus and evidence the assault occurred.

Because so few MST survivors ever report the assault, VA officials have acknowledged the challenges MST survivors face in the claims process. For many MST survivors, the only evidence they can and will ever be able to provide is the diagnosis of a mental health condition related to the assault. In 2002, the VA changed the regulation to allow veterans to submit circumstantial evidence, or "markers" such as reports from law enforcement agencies, mental health counseling centers, statements from family members and evidence of behavioral changes as evidence in support of the assault. However, the regulation does not actually *require* the VA to accept any of these markers as evidence, and it is entirely up to the VA official(s) adjudicating the claim as to what qualifies as evidence. In 2011, at the urging of Congress and many veteran advocacy organizations, VA began increasing training and awareness about the MST claims process. However, GAO has confirmed that even after 3 years of increased training, there is still much confusion among VA employees on what they are supposed to accept as evidence in these types of claims. GAO's analysis found that grant rates across the VA range from 14%-88%, and GAO suggests the ability for veterans to have their claims decided accurately could very much rely on which VA office decides their claim. That is completely unacceptable.

VA employees responsible for deciding MST claims told GAO staff that "even with better guidance and training—identifying markers remains a difficult task." For example, according to the report, a *key* VBA official told GAO that a post-service medical diagnosis and counseling is, under the regulation, supposed to be sufficient in satisfying the evidentiary requirement. Of the 15 qualified MST claims officials GAO asked, only 2 were aware of this interpretation. But under the current regulation, even if every rater and examiner knew of this provision, he or she would not be forced to accept this information as evidence in support of the assault. We believe that this is a major shortcoming of the regulation, and simply increasing training will not correct the deficiencies inherent therein.

We request that you exercise your authority as Acting Secretary and simplify the regulation to mandate compensation and pension examinations in every MST-related claim and to allow a medical examiner's

diagnosis of a mental health condition as sufficient evidence in support of the assault. This common sense reform is the only way to reduce the enormous amount of confusion in the current regulation and guarantee that MST survivors will not continue to be incorrectly denied disability benefits.

The GAO report also criticizes the VA for its limited outreach to veterans in announcing the agency's decision to review any previously denied MST claim where Post Traumatic Stress Disorder (PTSD) is the claimed condition. Because VA has acknowledged that many MST survivors could have been denied benefits incorrectly, the agency has offered to review any previously denied MST/PTSD claim submitted prior to 2011. While we are grateful for the review, this review is in itself an admission of the problems inherent in 38 CFR § 3.304(f)(5).

To inform MST survivors of this review, so far VA staff has only held two Washington, D.C.-based meetings. And even though VA reports more than 29,000 MST claims were filed between 2008 and 2013, VA has only sent letters to 2,667 veterans notifying them of this review. It is extremely disappointing to us that VA offered such a major review to MST survivors and failed to take common sense, proactive steps to inform the veteran population. The VA's actions regarding the notification of this review were woefully insufficient and have the appearance of being less than genuine. If the VA actually believes many veterans were incorrectly denied, then it is incumbent upon the agency to do everything it can to make it right. We urge you to direct the Veterans Benefit Administration to undertake an extensive outreach campaign and work with the Veterans Health Administration, Veterans Service Organizations and other advocacy groups to ensure MST survivors with previously denied claims have another opportunity to apply for disability benefits.

We urge you to exercise your authority and ease the burden of proof for MST survivors by simplifying the current regulation. Thank you for your attention to this matter—we look forward to your prompt response.

Sincerely,



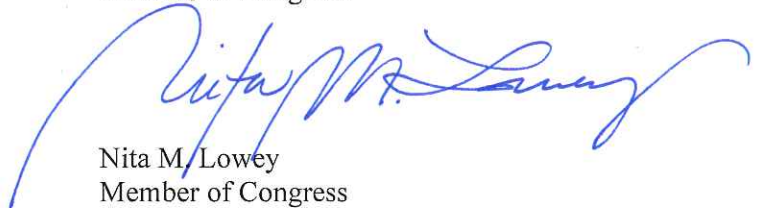
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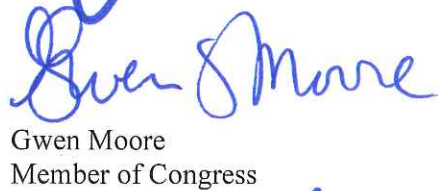
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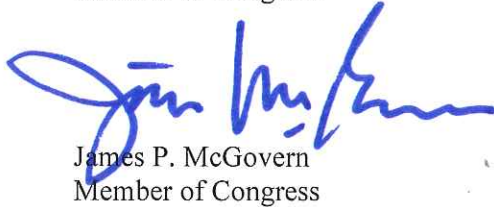
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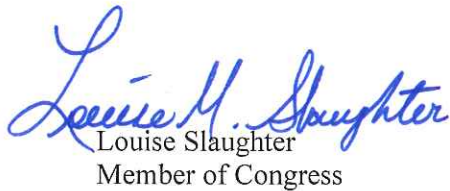
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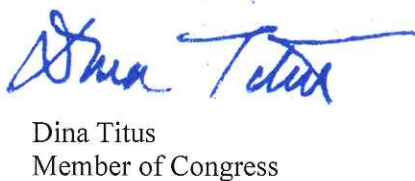
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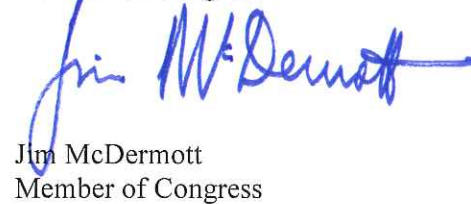
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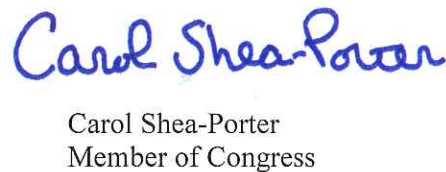
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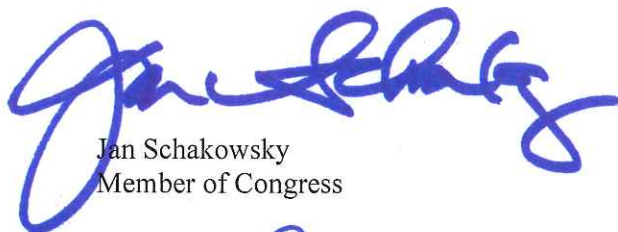

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